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12
13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **OAKLAND DIVISION**

16 DANIEL HELIX, individually and on
17 behalf of all others similarly situated,

18 Plaintiff,

19 v.

20 1-800 REMODEL, INC., a California
21 corporation,

22 Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

23 **CLASS ACTION COMPLAINT**

24 Plaintiff Daniel Helix (“Plaintiff” or “Helix”) brings this Class Action
25 Complaint and Demand for Jury Trial (“Complaint”) against Defendant 1-800
26

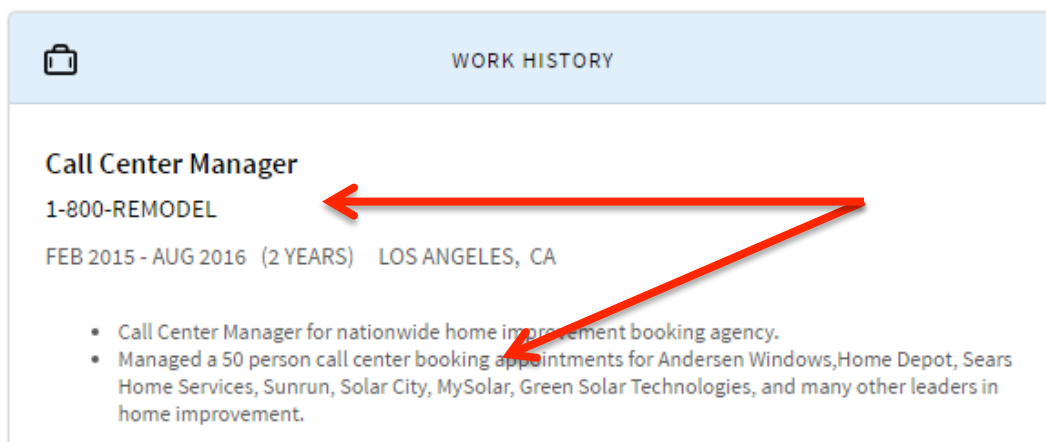
1 Remodel, Inc. (“Defendant” or “1-800 Remodel”) to (1) stop its practice of placing
2 calls using an “automatic telephone dialing system” (“ATDS”) and/or using “an
3 artificial or prerecorded voice” to the cellular telephones of consumers nationwide
4 without their prior express consent; (2) to enjoin Defendant from continuing to
5 place such calls to consumers; and (3) to obtain redress for all persons injured by
6 its conduct. Plaintiff, for his Complaint, alleges as follows upon personal
7 knowledge as to himself and his own acts and experiences, and, as to all other
8 matters, upon information and belief, including investigation conducted by his
9 attorneys.
10
11
12

13 **NATURE OF THE ACTION**

14 1. Defendant 1-800 Remodel is a nationwide network of top licensed
15 contractors, available for most remodeling jobs. 1-800 Remodel sets homeowners
16 up with multiple contractors and quotes in order for a homeowner to compare and
17 contrast remodeling rates.
18

19 2. On information and belief, 1-800 Remodel runs a 50-person call
20 center¹ in Los Angeles, California to generate its calls for its various clients looking
21 to secure a quote and/or rates for remodeling:
22
23
24
25

26 ¹ <https://www.workpop.com/community/posts/nWjQgWWdLZBCggFSo/applying-for-windows-and-doors-associate-at-ibtech-staffing>.
27



3. Unfortunately for consumers, 1-800 Remodel casts its marketing net too wide. That is, in an attempt to generate business, 1-800 Remodel conducted (and continues to conduct) a wide scale telemarketing campaign that repeatedly makes unsolicited calls to consumers' telephones and to telephone numbers listed on the National Do Not Call Registry without prior express consent, all in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the "TCPA").

4. By making the telephone calls at issue in this Complaint, 1-800 Remodel caused Helix and the members of the Class actual harm and cognizable legal injury. This includes the aggravation and nuisance and invasions of privacy that result from the receipt of such calls, in addition to a loss of value realized for the monies consumers paid to their wireless carriers for the receipt of such calls. Furthermore, the calls interfered with Helix and the other Class members' use and enjoyment of their cellular telephones, including the related data, software, and hardware components.

5. The TCPA was enacted to protect consumers from unsolicited telephone calls like the call alleged in this case. In response to 1-800 Remodel's unlawful conduct, Helix files the instant lawsuit and seek an injunction requiring 1-800 Remodel to cease all unsolicited telephone calling activities to consumers as complained of herein and an award of statutory damages to the members of the Class under the TCPA, together with costs and reasonable attorneys' fees.

PARTIES

6. Plaintiff Daniel Helix is a natural person over the age of 18. Helix resides in Rodeo, California, in this District.

7. Defendant 1-800 Remodel is a corporation organized and existing under the laws of the State of California with its headquarters located at 5850 W. 3rd St., #160, Los Angeles, California 90036. Defendant conducts business throughout this District, the State of California, and the United States.

JURISDICTION AND VENUE

8. This Court has federal question subject matter jurisdiction under 28 U.S.C. § 1331, as the action arises under the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., which is a federal statute.

9. The Court has personal jurisdiction over 1-800 Remodel because it solicits significant consumer business in this District and the unlawful conduct alleged in this Complaint occurred in or was directed to this District.

1 10. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)
2 because 1-800 Remodel solicits a significant amount of consumer business within
3 this District and because the wrongful conduct giving rise to this case occurred in,
4 was directed to, and/or emanated from this District. Venue is additionally proper
5 because Plaintiff resides in this District.
6

7 **COMMON FACTUAL ALLEGATIONS**
8

9 11. Defendant 1-800 Remodel is a telemarketing company headquartered
10 in California that, upon information and belief, uses a call center in Los Angeles,
11 California, to make unsolicited telemarketing sales calls.
12

13 12. Unfortunately for consumers, Defendant utilized (and continues to
14 utilize) a sophisticated telephone dialing system to call cellular telephone users *en*
15 *masse* for the purpose of promoting its services, often times, as in the instant case,
16 calling consumers on their cellular phones.
17

18 13. In fact, 1-800 Remodel itself makes it known that it uses dialer
19 equipment on its own website:
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NEED NEW WINDOWS
FOR YOUR HOME?

THE 1800REMODEL ADVANTAGE

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- ONE SHORT FORM
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- COMPARE QUOTES & SAVE
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COMPARE CONTRACTOR QUOTES!

By submitting your information, you authorize up to four home improvement companies that can help with your project to call you on the phone number provided, and you understand that they may use automated phone technology to contact you, which may include artificial or pre-recorded calls and/or text messages, and that your consent is not required to purchase products or services.

9 “[b]y submitting your information, you authorize up to four home
10 improvement companies that can help with your project to call you on
11 the phone number provided, and you understand that they may use
12 *automated phone technology to contact you*, which may include
13 artificial or pre-recorded calls and/or text messages, and that your
14 consent is not required to purchase products or services” (emphasis
15 added).²

16 This “automated phone technology constitutes as an ATDS under the TCPA.

17 14. Even though 1-800 Remodel purports to gain appropriate consent to
18 call leads using an autodialer, in 1-800 Remodel’s overzealous marketing attempts,
19 it placed (and continues to place) phone calls to consumers that never provided
20 prior express consent to be called and to consumers’ telephones with whom it had
21 no prior business relationship.

22 15. 1-800 Remodel, on its own and/or through its agents, uses a variety of
23 local phone numbers to make these unlawful sales calls to consumers.

24 16. Not surprisingly, consumers have repeatedly spoken out against
25

26
27 ² <http://1800remodel.com/remodeling/?type=windows&zipcode=94572>

1 Defendant's pervasive and widespread telemarketing practices:

- 2
- 3 • We received a MINIMUM of five calls every day for over a month.
It needs to stop.³
- 4 • It's a company that remodels. I told him no. He just said I can get
5 govt asst. he gave me long explanation about getting government
6 asst. I just hung up on him. He called me thru the weekend and
called me on Labor Day.⁴
- 7 • Answered. No one said anything. Please blocked [sic] this
number.⁵
- 8 • It's a remodeling I said no. They still call.⁶
- 9 • Calls me 6 + times a day. I have picked up twice telling them to
10 stop calling me. They claim to be from 1800REMODEL offering
free estimates on window installation in your area. No idea how
11 they got my number, but I sure as hell don't want random people
12 coming to my house to look at windows. I got a call the other day
wanting me to talk about my home security team.⁷
- 13 • [T]his number has called my phone approx.. 20 times, buy say
14 nothing.⁸
- 15 • Same as above, no message either.⁹
- 16 • Called me multiple times and when they finally did speak they
asked for a person that wasn't me.¹⁰
- 17 • Will not take no for an answer. Completely rude * and the National
Do Not Call List is WORTHLESS!!!¹¹
- 18 • Calls daily, never leaves message, and when I do answer the call,
19 they hang up.¹²
- 20

21 ³ <http://800notes.com/Phone.aspx/1-323-331-9969>

22 ⁴ *Id.*

23 ⁵ *Id.*

24 ⁶ <http://callername.com/user/marked/3233319969>

25 ⁷ *Id.*

26 ⁸ <http://whocallsme.com/Phone-Number.aspx/3233319969>

27 ⁹ *Id.*

28 ¹⁰ *Id.*

¹¹ <http://shouldianswer.com/phone-number/3233319969>

¹² <http://mrnumber.com/1-323-331-9969/complaints>

1 17. In making the phone calls at issue in this Complaint, 1-800 Remodel
2 and/or its agent utilized an automatic telephone dialing system. Specifically, the
3 hardware and software used by 1-800 Remodel (or its agent) has the capacity to
4 store, produce, and dial random or sequential numbers, and/or receive and store lists
5 of telephone numbers, and to dial such numbers, *en masse*, in an automated fashion
6 without human intervention. 1-800 Remodel's automated dialing equipment
7 includes features substantially similar to a predictive dialer, inasmuch as it is
8 capable of making numerous calls simultaneously (all without human intervention).
9

10 18. There are numerous third party services that will additionally scrub the
11 call lists for a telemarketer to segment out landline and cellular telephone numbers,
12 since the consent standards differ depending on what type of phone a telemarketer
13 is calling.¹³ Indeed, one service can:
14

15 Instantly verify whether a specific phone number is wireless or
16 wireline to learn if TCPA regulations apply – and verify the identity
17 of the current subscriber to determine if they are the same party who
18 provided you with consent.¹⁴
19

20 19. 1-800 Remodel knowingly made (and continues to make)
21 telemarketing calls without the prior express consent of the call recipients and
22 knowingly continues to call such consumers after requests to stop. As such, 1-800
23

24
25
26 ¹³ See e.g. <http://www.dncsolution.com/do-not-call.asp>; <http://www.donotcallprotection.com/do-not-call-compliance-solutions-1>; http://www.mindwav.com/tcpa_compliance_solution.asp.

27 ¹⁴ <https://www.neustar.biz/services/tcpa-compliance>

1 Remodel not only invaded the personal privacy of Plaintiff and members of the
2 putative Class, but also intentionally and repeatedly violated the TCPA.

3 **FACTS SPECIFIC TO PLAINTIFF HELIX**
4

5 20. On January 11, 2006, Helix registered his cellular telephone number
6 with the National Do Not Call Registry in order to avoid receiving unsolicited
7 telemarketing calls.
8

9 21. On or around December 9, 2016, Helix received a call from 1-800
10 Remodel on his cellular telephone from the phone number 323-331-9969.

11 22. Upon answering the call, Helix noticed a distinct, 2 - 3 second pause,
12 which is a distinct indicator of the use of an ATDS.
13

14 23. After the distinct pause, an agent who identified herself as "Courtney"
15 came on the line. She explained to Helix that she was calling from Defendant, 1-
16 800 Remodel.
17

18 24. Helix questioned why he was being contacted with a solicitation call.
19 He then asked to be put on 1-800 Remodel's do not call list.
20

21 25. On information and belief, 1-800 Remodel was calling him in an
22 attempt to refer him to one or more contractors for remodeling quotes.
23

24 26. Helix does not, and did not, have a relationship with 1-800 Remodel,
25 has never provided his cellular telephone number directly to 1-800 Remodel, and
26 has never requested that 1-800 Remodel place a call to him to offer him its services.
27

1 Simply put, Helix has never provided any form of prior express written consent to
2 1-800 Remodel to place a call to him and has no prior business relationship with 1-
3 800 Remodel.

4
5 27. As a result of Defendant's intrusive call, Plaintiff suffered harm and an
6 invasion of his privacy.

7
8 28. 1-800 Remodel is and was aware that the above-described telephone
9 calls were being made either by them directly, or made on their behalf, and that the
10 telephone calls were being made to consumers who had not consented to receive
11 them.

12
13 29. To redress these injuries, Plaintiff, on behalf of himself and a Class of
14 similarly situated individuals, brings suit under the Telephone Consumer Protection
15 Act, 47 U.S.C. § 227, *et seq.*, which prohibits such unsolicited telemarketing calls
16 to cellular telephone numbers absent express prior consent.
17

18 CLASS ALLEGATIONS

19 30. **Class Allegations:** Plaintiff brings this action pursuant to Federal Rule
20 of Civil Procedure 23(a), (b)(2), and (b)(3) on behalf of himself and the class
21 defined as follows:
22

23 **Autodialed No Consent Class:** All persons in the United States who
24 from four years prior to the filing of the initial complaint in this action
25 to the present: (1) 1-800 Remodel (or a third person acting on behalf
26 of 1-800 Remodel) called; (2) on the person's cellular telephone
number; (3) for whom 1-800 Remodel claims it obtained prior express
consent in the same manner as 1-800 Remodel claims it obtained prior
express consent to call the Plaintiff.

1 The following people are excluded from the Class:

2 (1) any Judge or Magistrate presiding over this action and members of their
3 families; (2) 1-800 Remodel, its subsidiaries, parents, successors, predecessors,
4 and any entity in which 1-800 Remodel or its parents have a controlling interest and
5 its current or former employees, officers and directors; (3) persons who properly
6 execute and file a timely request for exclusion from the Class; (4) persons whose
7 claims in this matter have been finally adjudicated on the merits or otherwise
8 released; (5) Plaintiff's counsel and 1-800 Remodel's counsel; and (6) the legal
9 representatives, successors, and assigns of any such excluded persons. Plaintiff
10 anticipates the need to amend the class definition following discovery related to
11 such issues.
12

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15
16 31. **Numerosity:** The exact size of the Class is unknown and is not
17 available to Plaintiff at this time, but it is clear that individual joinder is
18 impracticable. On information and belief, 1-800 Remodel made telephone calls to
19 thousands of consumers who fall into the definition of the Class. Members of the
20 Class can be easily identified through 1-800 Remodel's records.
21

22
23 32. **Commonality and Predominance:** There are many questions of law
24 and fact common to the claims of Helix and the Class, and those questions are
25 central to the case and predominate over any questions that 1-800 Remodel may
26

claim affect individual members of the Class. Common questions for the Class include, but are not necessarily limited to the following:

- (a) Whether Defendant's conduct violated the TCPA;
- (b) Whether Defendant systematically made telephone calls to individuals who did not previously provide Defendant and/or its agents with their prior express consent to receive such phone calls; and
- (c) Whether Defendant made the calls with the use of an ATDS.
- (d) Whether the Plaintiff and the other members of the Class are entitled to statutory damages;
- (e) Whether Defendant acted willfully so as to require an award of treble or punitive damages; and
- (f) Such additional issues as may be identified through discovery.

33. **Typicality:** Plaintiff's claims are typical of the claims of the other members of the Class. Plaintiff and the Class sustained damages as a result of 1-800 Remodel's uniform wrongful conduct during transactions with Plaintiff and the Class.

34. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class, and have retained counsel competent and experienced in complex class actions. Plaintiff has no interest antagonistic to

1 those of the Class, and 1-800 Remodel has no defenses unique to Plaintiff.

2 35. **Policies Generally Applicable to the Class:** This class action is
3 appropriate for certification because 1-800 Remodel has acted or refused to act on
4 grounds generally applicable to the Class as a respective whole, thereby requiring
5 the Court's imposition of uniform relief to ensure compatible standards of conduct
6 toward the Class members, and making final injunctive relief appropriate with
7 respect to the Class. 1-800 Remodel's practices challenged herein apply to and
8 affect the Class members uniformly, and Plaintiff's challenge of those practices
9 hinges on 1-800 Remodel's conduct with respect to the Class as a respective whole,
10 not on facts or law applicable only to Plaintiff.
11

12
13
14 36. **Superiority and Manageability:** This case is also appropriate for
15 class certification because class proceedings are superior to all other available
16 methods for the fair and efficient adjudication of this controversy given that joinder
17 of all parties is impracticable. The damages suffered by the individual members of
18 the Class will likely be relatively small, especially given the burden and expense of
19 individual prosecution of the complex litigation necessitated by 1-800 Remodel's
20 actions. Thus, it would be virtually impossible for the individual members of the
21 Class to obtain effective relief from 1-800 Remodel's misconduct. Even if members
22 of the Class could sustain such individual litigation, it would still not be preferable
23 to a class action, because individual litigation would increase the delay and expense
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1 to all parties due to the complex legal and factual controversies presented in this
2 Complaint. By contrast, a class action presents far fewer management difficulties
3 and provides the benefits of single adjudication, economy of scale, and
4 comprehensive supervision by a single court. Economies of time, effort and
5 expense will be fostered and uniformity of decisions ensured.
6

7 **FIRST CAUSE OF ACTION**

8 **Violation of 47 U.S.C. § 227**

9 **(On behalf of the Plaintiff Helix and the Autodialed No Consent Class)**

10 37. Plaintiff incorporates the foregoing allegations as if fully set forth
11 herein.
12

13 38. Defendant made unsolicited and unwanted telemarketing calls to
14 telephone numbers belonging to the Plaintiff and the other members of the
15 Autodialed No Consent Class—without their prior express written consent—in an
16 effort to sell its services.
17

18 39. Defendant made the telephone calls using equipment that had the
19 capacity to store or produce telephone numbers to be called using a random or
20 sequential number generator, and/or receive and store lists of phone numbers, and
21 to dial such numbers, *en masse*.
22

23 40. Defendant utilized equipment that made the telephone calls to the
24 Plaintiff and other members of the Class simultaneously and without human
25 intervention.
26

41. By making unsolicited telephone calls to Plaintiff and members of the Class's cellular telephones without prior express consent, and by utilizing an ATDS, Defendant violated 47 U.S.C. § 227(b)(1)(A)(iii).

42. As a result of 1-800 Remodel's unlawful conduct, Plaintiff and the members of the Class suffered actual damages in the form of monies paid to receive the unsolicited telephone calls on their cellular phones and a reduction in their allotment of minutes and, under 47 U.S.C. § 227(b)(3)(B), are each entitled to, *inter alia*, a minimum of \$500 in damages for each such violation of the TCPA.

43. Should the Court determine that 1-800 Remodel's conduct was willful and knowing, the Court may, pursuant to 47 U.S.C. § 227(b)(3), treble the amount of statutory damages recoverable by the Plaintiff and the other members of the Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Daniel Helix, individually and on behalf of the Class, prays for the following relief:

1. An order certifying the Class as defined above, appointing Plaintiff Daniel Helix as the representative of the Class and appointing his counsel as Class Counsel;

2. An award of actual and statutory damages to be paid into a common fund for the benefit of the Plaintiff and the Class Members

1 3. An order declaring that Defendant's actions, as set out above, violate
2 the TCPA;

3 4. A declaratory judgment that Defendant's telephone calling equipment
4 constitutes an automatic telephone dialing system under the TCPA;
5

6 5. An order requiring Defendant to disgorge any ill-gotten funds acquired
7 as a result of its unlawful telephone calling practices;
8

9 6. An order requiring Defendant to identify any third-party involved in
10 the autodialed calling as set out above, as well as the terms of any contract or
11 compensation arrangement it has or had with such third parties;
12

13 7. An injunction requiring 1-800 Remodel and its agents to cease all
14 unsolicited telephone calling activities, and otherwise protecting the interests of the
15 Class;
16

17 8. An injunction prohibiting Defendant from contracting with any third-
18 party for marketing purposes until it establishes and implements policies and
19 procedures for ensuring the third-party's compliance with the TCPA;
20

21 9. An award of reasonable attorneys' fees and costs to be paid out of the
22 common fund prayed for above;
23

24 10. Permitting Plaintiff and the Class leave to amend the Complaint to
25 conform to the evidence presented at trial; and

26 11. Such other and further relief that the Court deems reasonable and just.
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